

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: September 23, 2005

Approved

Date

9/28/05

COUNCIL DISTRICT: City-wide

SUBJECT: REPORT BACK ON CRITERIA FOR USE OF CONSULTANTS FOR PLAN REVIEW AND ENGINEERING PEER REVIEW SERVICES, APPROVAL OF A FOURTH CONTRACT AMENDMENT FOR PLAN REVIEW SERVICES, AUTHORIZATION TO BEGIN RFQ PROCESS AND DEVELOP A PROCUREMENT STRATEGY FOR CONSULTANT PLAN REVIEW AND ENGINEERING PEER REVIEW SERVICES.

RECOMMENDATION

- (a) Report on the criteria for use of consultants for plan review and engineering peer review services associated with the building permit process.
- (b) Adoption of a resolution authorizing the City Manager to execute a fourth amendment to the agreements for plan check services as follows:
 - (1) Increasing maximum compensation by \$50,000 for 5 agreements to the following amounts:
 - (a) The Phillips Group by \$5,000 from \$50,000 to \$55,000.
 - (b) Kutzmann & Associates by \$5,000 from \$129,000 to \$134,000.
 - (c) Linhart, Petersen, Powers Associates by \$30,000 from \$141,000 to \$171,000.
 - (d) R.K. Associates by \$5,000 from \$15,000 to \$20,000.
 - (e) Esgil Corporation by \$5,000 from \$105,000 to \$110,000.
 - (2) Extending the terms of the agreements by four months from October 1, 2005 to January 31, 2006;
- (c) Authorization for the beginning of a process to identify and review qualifications of outside consultants for plan review and engineering peer review professional services and develop a procurement strategy.

BACKGROUND

The City is required by state law to review all construction documents and supporting calculations to determine substantial conformance with the California Building Code prior to the issuance of building permits for all private construction within the City. This service is critical to the safety of the general public who work and visit the City as well as homeowners and residents who call San Jose home.

The City has utilized City paid consultant services and developer paid third party plan review and peer review services for a number of years to supplement plan review services provided by City staff. With City paid consultant services, one of the five consultants with a current City contract is utilized to provide plan review services based on a pre-determined percentage of the City collected plan review fee. With third party plan review services the developer contracts with a third party consultant from a City maintained list or a City approved peer review firm from a State maintained list. Fees for services are paid to the third party consultant by the developer as a transaction between two private parties. The City has typically collected its full plan review fee from the developer in addition to the private transaction between the developer and third party plan review firm. The City still provided coordination of permit requirements not subject to third party review and performed a cursory review of the construction documents for quality control purposes. The obvious limitations of this approach are the developer pays twice and has the potential to receive conflicting comments from the City and third party reviews. Additionally, this arrangement can create a potential for a conflict of interest with the developer directly contracting with both the design firm and the plan review consultant. This form of review was popular during the dot com building boom when City staff was overwhelmed and is used less frequently now, typically only for structural engineering peer review services.

Structural engineering peer review is a conceptual review of the basic structural system and design assumptions and is typically provided by a practicing structural engineer with significant recent design experience with the type of structure being proposed. Peer review can be required by the design methodology (as in the case of FEMA 356 structural reviews) or required by the Building Official to provide an independent look at the design of major complex designs such as a 20-story post-tensioned concrete high-rise structure. All peer reviews are presently done through third party review because the design consultants utilized for peer review do not have contracts with the City.

On December 3, 2004 the City Council adopted a policy for selecting consultants that provide architectural, landscape architectural, engineering, environmental, land surveying and construction management services on capital improvement projects.

Early in 2005, the Chief Plan Check Engineer set out to expand the ability of the City to utilize outside consultants for peer review and to provide a sufficient pool of resources for plan review should development activity spike with low interest rates and the recovering economy. The immediate need to expand the list was partially to develop the ability of the organization to contract for peer review instead of the past practice of third party. Upon consultation with the City Attorney's office it was determined expansion of the current list of five plan review consultants was not advisable. There was no known record of the selection process used to establish the existing group of consultants and the provisions of the City Council Policy regarding the preference for small and local businesses were not in effect at that time. Because existing contract extensions were running out and contract appropriations were low, it was determined additional contract funding and the authority to temporarily extend existing contracts was needed to provide reasonable service levels while City staff dealt with challenges associated with the Grand Prix, the move to the New City Hall and the summer construction season.

On June 2, 2005 the City Council approved a third contract amendment for plan review: extending the terms of the existing agreements for the five consultants by three months from July 1, 2005 until September 30, 2005; amending the rate of compensation, and increasing the appropriation to a total of \$50,000. Based on concerns brought forward by the Association of Engineers and Architects, IFPTE Local 21 (AEA), Vice-Mayor Chavez asked Staff to come back to the City Council at a later date and clarify how decisions are made to either hire consultants or expand staff for plan review services and to update the City Council on the recently completed labor negotiation process affecting overtime for AEA represented engineers and architects.

Approximately, in June of 2004, the Association of Engineers and Architects, IFPTE Local 21 (AEA) and the City began negotiations for a new Memorandum of Agreement. On or about February 1, 2005, the Union and the City reached an agreement that all Engineers and Architects would be salaried (not hourly), consistent with the Fair Labor Standards Act.

The City did agree to continue discussions regarding overtime for Development Review for Plan Check Engineers and a Side Letter was signed by AEA and the City confirming this agreement. However, when the side letter was signed, a thorough discussion did occur that the Side Letter was just an agreement to continue discussing the issue, and that it was not a commitment that the City would agree to provide overtime for Plan Check Engineers. On or about April 27, 2005, the City and the Union began the above-mentioned discussions. During these discussions, AEA requested that the Plan Check Engineers in the Fire and Planning, Building and Code Enforcement Departments be eligible for overtime. After a thorough discussion and review of the information provided, the City and the Union did not reach an agreement to make some AEA exempt (salaried) classifications eligible for overtime.

Exempt (salaried) employees are those who are exempt from certain wage and hour laws, (i.e. overtime pay). Additionally, an exempt (salaried) employee is paid for the job function performed not for the hours of labor required to perform such function.

There are approximately 196 classifications throughout the City that are exempt, and therefore are not eligible for overtime, and approximately 620 employees. Additionally, all exempt classifications receive the following benefits in-lieu of overtime:

- An extra week of vacation
- 40 hours of executive leave, plus a possible additional 40 hours
- Not being docked for partial day absences

The AEA exempt classifications that were requested to be eligible for overtime, would also receive the above benefits. There are many salaried employees in the City that have to put in more hours than a regular work day in order to get the job done. These employees also have important jobs throughout the City, however, are not paid overtime. The City is open to discussing with AEA having certain classifications hourly during the next contract negotiations.

CONTRACTING-IN PROCESS

Approximately, in April of 2004, the City Manager's Office developed guidelines for a "Contracting-In" Pilot Process. Under this process, all proposed contract services valued at \$100,000 or more are reviewed for opportunities to in-source the services delivered. The goal of the pilot process is to maintain service delivery effectiveness and efficiency, provide uniformity and consistency in decision making and facilitate opportunities to retain City employees who may be at risk because of budget balancing actions. However, there are occasions when a Department may need to contract out services or hire consultants. The criteria for using consultants is as follows:

- The use of consultants is allowed when the needed expertise is not available with existing city staff or when schedule commitments cannot be changed. This is common in some of the more specialized consulting work such as Structural Engineering or various environmental work.
- The use of consultants is allowed when schedule commitments cannot be achieved with existing City staff. This is particularly true of many of the bond programs that have aggressive schedules.
- When the use of consultants is necessary to achieve the goals described above, look for opportunities to partner with the consultants to split the work where possible.
- All consultant agreements shall include a termination clause that allows the City the flexibility to in-source the work if conditions change from when the agreement was executed.

The fourth extension of the existing contracts and the proposed fifth extension and RFQ were reviewed through the Contracting-In Process and it was determined that both met the qualifications to contract out services. The Contracting-In Checklist for the proposed fifth extension and RFQ was discussed at the September 1, 2005 meeting of the Contracting-In Steering Committee that is made up of various City representatives, and includes City Labor Alliance (CLA) representatives. The Committee or CLA representatives raised no objections to the proposals.

ANALYSIS

While plan review workload in the aggregate has some tendency to follow seasonal patterns and economic trends, plan review workload can vary substantially from month to month and week to week depending on a wide variety of factors. Staff capacity available at any moment for assignment also constantly varies due to previous commitment of staff to other projects, vacation, sick and holiday leave. While a number of the less complex plan reviews are completed by appointment, staff has little or no control over the timing of the majority of plan review submittals and re-submittals.

Plan review for on-site building construction occurs over a wide variety of disciplines including: site research, zoning clearance, plumbing, mechanical, electrical, structural, disabled access, non-structural building code, fire suppression and alarm systems, geological review, hazardous materials and energy review. The City has an outstanding group of hourly and management staff that completes virtually all of the plan review services. Over the past five years, the average use of City paid consultant plan review has been less than 2% of resources utilized for plan review. The current appropriation of \$200,000 is less than 3%. Several different bargaining units represent staff associated with the development plan review process.

It is a critical aspect of the City's economic development strategy to provide excellent service with the building permit process. The City has developed several plan review services targeting specific types of projects. Examples include the Special Tenant Improvement Process, the Small Business Ambassador Program, Coordinated and Express Plan Reviews. Depending on the type and complexity of project a goal date is established for each plan review. Our goal established by the Mayor's Getting Families Back to Work program is to be on time 100% of the time when a complete project is turned in.

We meet this goal with some exceptions and are serious about making improvements to be on time all of the time. It is critical to our success to be able to apply additional resources quickly as we react to a continually changing mix of pending project submittals and staff resource availability. The various options available in order of time to implement are as follows:

1. Our first option to quickly provide additional resources when needed is to have City staff work extra hours beyond normal business hours. Hourly employees (inspectors and permit specialists) who work extra hours are compensated with overtime pay or compensatory time off in accordance with their labor agreement. Professional and management employees (engineers and architects) work the number of hours necessary to get the job done and are compensated with additional benefits and time off as indicated in the background section of this document. Average hours of individual professional employees and managers tend to vary between 40 and 50 hours per week.
2. Our second option to quickly provide additional resources when needed is to draw staff from other areas if available. This is accomplished in the Plumbing, Mechanical and Electrical Review by pulling in additional staff from the field staff when available. We are looking this same option to assist more with the review of wood frame homes during workload fluctuations in the field. Inspection staff is supplemented with the re-hire of retired inspectors during summer months. In Fire Prevention, engineers shift between architectural fire & life safety review and fire protection systems & alarms. The field inspection workload is augmented through the use of Fire Captains on an overtime basis. Staff in Haz Mat development and inspection also has the capability of shifting between divisions to balance workload.
3. Our third option to provide additional resources is to contract out some plan review work to outside consultants and utilize peer review on projects where experienced staff are already assigned to other projects.
4. Our final option to provide additional resources to respond to increases in workload is to seek additional staff resources in the budget, hire and train additional staff.

We typically utilize a combination of all options to respond to a variety of workload conditions. Because of the budget sustainability concerns, additional permanent staff is requested in the budget process only after there are strong indicators of future sustained work. The use of consultant resources as a relief valve allows us to make good long-term budget recommendations and not be reactive to short spikes and variations in resources or activity. Sustained need for additional resources and increases in measured work activity are good indicators for adjustment of permanent resources.

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Making quick decisions when engaging additional resources is critical to the timely success of the plan review process. Qualifications and availability of staff and consultants are the key considerations. Because of the variety of projects needing plan review, a diverse pool of qualified plan review and structural engineering consultants is required in addition to the ability to utilize City staff for additional work in accordance with their labor agreements. It should be noted the use of contractual services will not result in the elimination of any City positions, but are used to supplement the existing workforce on an as-needed basis.

OUTCOMES

Once started, it is anticipated a RFQ for plan review and structural engineering peer review services will take two to three months to complete. The action to extend and augment existing agreements will enable the Building Division to maintain consultant plan review agreements at levels needed to meet peak service demands until an RFQ is completed and new contracts are finalized.

Staff from the Building Division and the Fire Prevention Bureau will work with the City Manager to develop a written procurement strategy for plan review and engineering peer review services prior to execution of contracts recruited under the RFQ process.

PUBLIC OUTREACH

The development industry supports the use of outside consultants to ensure service levels are maintained.

COORDINATION

This memorandum was coordinated with the Fire Department, the City Attorney's Office, Office of Employee Relations, and the City Manager's Office. The Contracting-in Steering Committee also discussed these proposed contracts.

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COST IMPLICATIONS

The proposed addition of \$50,000 to the contracts of the five plan check consultants will raise the combined cumulative "not to exceed" amounts of the five agreements to \$490,000. Funding will come from PBCE's FY 2005-2006 non-personal appropriation.

CEQA

Not a project.



Dennis Richardson for:

STEPHEN M. HAASE, DIRECTOR

Planning, Building and Code Enforcement

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